Before the Massachusetts
Department of Telecommunications and Energy

In the Matter of Petition of Charter Fiberlink MA-CCO, LLC for Arbitration of an Amendment to the Interconnection Agreement Between Verizon-Massachusetts, Inc. and Charter Fiberlink MA-CCO, LLC Pursuant to Section 252 of the Communications Act of 1934, as Amended	Docket No. 06-56

DIRECT TESTIMONY OF TED SCHREMP ON BEHALF OF CHARTER FIBERLINK MA-CCO, LLC

August 2, 2006

EXECUTIVE SUMMARY

Charter Fiberlink seeks a fiber meet point arrangement from Verizon that is fair, equitable and efficient. Charter Fiberlink's proposed fiber meet terms and conditions do just that. Verizon's proposals, however, attempt to limit Charter Fiberlink's ability to request a fiber meet point arrangement in the first instance and attempt to force Charter Fiberlink to pay for Verizon's costs of building a fiber meet point arrangement. The testimony of Ted Schremp, Senior Vice President and General Manager of Charter Fiberlink, addresses these and other disputed issues in this proceeding.

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I. INTRODUCTION

Q. PLEASE STATE YOUR NAME, POSITION, EMPLOYER, AND BUSINESS ADDRESS.

A. My name is Ted Schremp. I am the Senior Vice President and General Manager of Charter Fiberlink MA-CCO, LLC, and the entity that filed the arbitration petition in this case. My business address is 12405 Powers Court Drive, St. Louis, Missouri.

Q. PLEASE REVIEW YOUR RELEVANT WORK EXPERIENCE AND EDUCATION.

A. Prior to my employment with Charter Fiberlink ("Charter"), I was employed by Hewlett Packard where I co-founded its Cable, Media and Entertainment organization and headed up development and strategy for the segment. Before joining Hewlett Packard, I worked for PNV, Inc. where I developed and executed telecommunications sales and marketing strategies, including voice over IP. In addition to these positions, I have worked for Comcast Cellular, WinStar Communications, and Cable and Wireless, Inc. I received Bachelor of Arts degree in Economics and Business from the University of Pittsburgh in 1993. I received a Masters of Business Administration from Pennsylvania State University in 2003.

II. PURPOSE AND SUMMARY OF THIS TESTIMONY

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. In my testimony I will address the operational and business issues stemming from the disputed issues in this case. In addition, I will provide some background information on Charter and the reasons that Charter seeks a fiber meet point arrangement. Specifically, I focus on Issue No. 1 and Issue No. 2. My colleague, Mike Cornelius, will focus his testimony on the technical aspects of these two issues, as well as Issue Nos. 3, 4 and 5; and the new issues raised by Verizon.

Q. PLEASE SUMMARIZE YOUR TESTIMONY, INCLUDING YOUR CONCLUSIONS AND RECOMMENDATIONS.

A. The process of establishing a fiber meet point with Verizon when Charter enters a market should be efficient and fair. Charter's proposed contract language fairly balances the costs and benefits of establishing fiber meet points as between Charter and Verizon. Verizon's proposals, by contrast, are designed to throw grit in the gears of the process by adding costs and procedural requirements that are neither necessary or appropriate as between two facilities-based competitors. The Department, therefore, should adopt Charter's proposed language for the fiber meet point amendment and reject Verizon's proposals.

III. BACKGROUND

Q. PLEASE PROVIDE SOME BACKGROUND ON CHARTER FIBERLINK AND ITS DESIRE TO ESTABLISH A FIBER MEET POINT ARRANGEMENT WITH VERIZON.

A. As my colleague, Mike Cornelius, testifies, Charter is a facilities-based competitive local exchange carrier ("CLEC") that provides telecommunications services to primarily residential customers, utilizing the network facilities of its affiliated cable company, along with telephony-specific facilities and functions. Charter has been operating as a CLEC in Massachusetts since April 1, 2004, and now offers service in several different parts of Massachusetts, including the communities of Worcester (LATA 128) and Chicopee (LATA 126). Charter's experience with providing competing services to residential customers over its own network facilities puts us in a unique position to propose terms that are both commercially reasonable and technically sound.

Verizon's proposals seem to me to reflect an unwillingness to acknowledge developments in the industry, technology and competition – and, specifically, the growing importance of true facilities-based competitors like Charter. Earlier generations of CLECs needed collocation, unbundled elements, and associated efficient access to Verizon's internal operations and support systems. For such entities, interconnection for the exchange of traffic, while not unimportant, was less critical than getting access to the Verizon facilities and functions they needed to ***create*** the traffic in the first place. Particularly for collocation-based CLECs, interconnection to exchange traffic is fairly easy to add to a collocation arrangement established to gain access to network elements. Charter doesn't need any of that. Charter has its own switching functionality and its own facilities to connect to its customers. Therefore, the only thing that Charter needs is efficient network interconnection to exchange traffic. While fiber meet arrangements may have been a sort of "add on" item for past generations of CLECs, it is of primary importance for Charter.

Verizon's backward-looking view of the central importance of interconnection has, it seems to me, led Verizon to resist Charter's efforts to establish fair and reasonable contract terms which reflect current law, while at the same time allow both parties the flexibility to compete with each other in the marketplace based on rates, services and bundled packages. For these reasons I believe that adherence to Verizon's proposed contract terms will hinder, rather than enable, competitive choices for subscribers in Massachusetts.

Q. WHAT IS A FIBER MEET POINT ARRANGEMENT?

A. A fiber meet point arrangement is a method of interconnecting two separate networks, via fiber optic facilities and equipment, for the purpose of exchanging traffic. Under this form of interconnection the two entities will physically interconnect transmission facilities (in this case fiber) at a designated "meet point." This meet point then becomes the Parties' designated point of interconnection between their respective networks. On each side of the meet point each Party will deploy certain transmission and terminal equipment used to operate the meet point interconnection facilities. Each party is responsible for managing its network on its side of the meet point.

I am not testifying to purely technical matters, but at a high level, a fiber meet point arrangement usually consists of the following components: (1) fiber optic facilities (to physically carry traffic between the two networks); (2) fiber optic terminal ("FOT") equipment at each end of the fiber, including optical OCx "cards" (used to send and receive the optical signals over the fiber); and (3) multiplexing/demultiplexing devices (used to combine and sort out individual "trunks" carrying traffic with distinctive routing needs, such as direct end office trunking).

Q. WHY DOES CHARTER WANT A FIBER MEET POINT ARRANGEMENT WITH VERIZON?

A. Fiber meet point arrangements are highly efficient, in terms of handling high volumes of traffic, managing growth, and establishing separate/additional trunk groups for different categories of traffic, as appropriate. As a result, fiber meet points are Charter's preferred means of interconnecting with ILECs in markets that we enter.

Q. ARE THERE OTHER OPTIONS BESIDES FIBER MEET POINTS?

A. As my colleague, Mike Cornelius, explains in greater detail, Charter has three basic options for interconnecting with Verizon. However, practically speaking, the only available method at this time, other than a fiber meet, is to lease facilities from Verizon. Although relatively easy to implement, leasing facilities from Verizon can be costly. In addition, that approach reduces Charter's control over its own business. While it is difficult to quantify the "cost" of this factor, from an operations perspective Charter prefers to have as much control over its own activities as is feasible.

Q. ARE THERE REASONS CHARTER WANTS A FIBER MEET POINT, BESIDES CHARTER SEEKING TO AVOID PAYING VERIZON FOR LEASED FACILITIES?

A. Yes. In fact, the most compelling reason that Charter seeks these arrangements is because they are the most efficient, effective ways to exchange a high volume of traffic with Verizon. My colleague, Mr. Cornelius, discusses that point in greater detail. Therefore, interconnecting with Verizon via fiber meet points arrangements is the most advantageous form of interconnection for Charter. However, that option is not available to Charter at this time because of Verizon's unwillingness to establish such arrangements. That is, of course, why we are here before the Department asking for help with this dispute.

Q. WILL CHARTER USE THE FIBER MEET POINT ARRANGEMENT TO ACCESS UNBUNDLED NETWORK ELEMENTS?

A. No. As noted above, Charter has its own network and has no need to use Verizon's "UNEs." The fiber meet point arrangements established between Charter and Verizon will ***only*** be used to exchange traffic, not to access UNEs.

Q. HOW MANY FIBER MEET POINT ARRANGEMENTS DOES CHARTER WISH TO ESTABLISH IN MASSACHUSETTS?

A. Two – one in each of Massachusetts' two LATAs. Once established, Charter expects to designate those meet point arrangements as the single point of interconnection with Verizon in each LATA.

Q. WHEN DID CHARTER FIRST REQUEST A FIBER MEET POINT IN MASSACHUSETTS?

A. Charter first requested a meet point arrangement from Verizon on December 2, 2004.

Q. WHAT WAS VERIZON'S RESPONSE TO THAT REQUEST?

A. Verizon refused to do so unless Charter agreed to enter into an amendment to the Parties' interconnection agreement; and, in fact, for a period of time Verizon refused to engage in any interconnection activity until the fiber meet amendment was in place. Verizon later agreed this was unreasonable. When Verizon requested the meet point amendment, we did not think that this was strictly necessary but, having no other choice, Charter began good faith negotiations for that amendment in the middle of 2005. Those negotiations, of course, have not yet yielded a final agreement.

Q. CAN YOU DESCRIBE, IN BROAD TERMS, CHARTER'S PROPOSAL FOR ESTABLISHING THESE FIBER MEET ARRANGEMENTS?

A. Yes. Without getting into all of the details at this point, I can tell you that Charter seeks a fiber meet point arrangement that is fair, equitable and efficient. The main components of Charter's proposal are as follows: first, Charter should be able to request a fiber meet point arrangement if it is either exchanging a DS3 worth of traffic or if it forecasts that level of traffic within next 12 months. Second, each party should be responsible for the costs of building and operating the fiber meet point facilities on its respective side of the meet point. Third, the parties should mutually agree on reasonable terms for the location of the meet point, and the relative length of fiber deployed by each Party. Fourth, the parties should exchange all of their traffic over the fiber meet point, without any limitations on the type of traffic and without any obligation to pay additional compensation (beyond normal reciprocal compensation payments) to the other Party.

Q. HOW DO THESE PRINCIPLES CONFLICT WITH VERIZON'S PROPOSAL?

A. They conflict with Verizon's proposal in several important ways.

First, Verizon would like to erect a series of different tests that Charter must satisfy before Charter can request a fiber meet point arrangement. Those tests are described in greater detail elsewhere but broadly speaking they would require Charter to demonstrate that it is ***already*** exchanging a DS3's worth of traffic with Verizon ***before*** Charter would be allowed to request a fiber meet point. One variation of this test is that Charter can request a fiber meet point if its traffic is equal to seventy percent of a DS3 and it is showing traffic growth rates of eight percent per month. These threshold tests are themselves unreasonable, but the real devil is in the details, as my colleague, Mike Cornelius, explains in his testimony. In contrast, Charter proposes much more reasonable threshold requirements (as I just explained).

A second major difference between Charter's proposal and Verizon is the fact that Verizon expects Charter to pay for portions of Verizon's fiber meet point arrangement. Verizon argues that these payments are necessary as a form of "assurance" to Verizon that Charter will not request a fiber meet point arrangement where it is not necessary. Charter, on the other hand, proposes that each Party be responsible for their own costs of building and operating the fiber meet point.

Another major point of conflict concerns whether Verizon's obligations to establish the meet point should be limited to a small area surrounding its central offices (COs). Verizon says that it should only have to go three miles from its CO. Charter proposes that the Parties mutually agree on a location that is convenient to both Parties.

A fourth major point of contention is whether or not the Parties should exchange all traffic over their meet point arrangement. Verizon says that should happen only if Charter agrees to pay additional tariff charges to Verizon. Charter disagrees that such additional charges are fair or necessary.

Q. DO OTHER ILECS IN OTHER STATES IMPOSE THE SAME TYPES OF LIMITATIONS AS VERIZON?

A. No. Charter has other fiber meet point arrangements with several other carriers in other states, but has never come across demands of the kind Verizon makes here. In fact, Charter and Verizon have a fiber meet point arrangement in Wisconsin. That arrangement was established several years ago (without these types of demands) and it seems to represent a fair and efficient method of interconnection for the Parties in Wisconsin. My colleague, Mike Cornelius, discusses some aspects of that arrangement in greater detail.

IV. <u>DISCUSSION OF SPECIFIC ISSUES IN THIS PROCEEDING</u>

IV.A. VERIZON'S PROPOSED LIMITATIONS ON CHARTER'S ABILITY TO REQUEST FIBER MEET POINT ARRANGEMENTS (ISSUE 1)

Q. WHAT IS THE ISSUE HERE?

A. The issue here is whether Verizon can impose traffic threshold limitations on when Charter may establish a fiber meet arrangement. The specific situation giving rise to this issue occurs when Charter is entering a new market to provide telephone service in competition with Verizon. In order to provide service to end users, Charter must interconnect with Verizon's network so that it can send and receive calls to and from the public switched telephone network (i.e. Verizon's network in large part).

Q. WHAT IS CHARTER'S PROPOSAL ON THE QUESTION OF WHEN THE PARTIES SHOULD BE ABLE TO MOVE TO A FIBER MEET POINT ARRANGEMENT?

A. Generally speaking, Charter proposes that either Party should be allowed to request a fiber meet arrangement when the requesting Party provides a good faith, written forecast that the Parties expect to exchange an amount of traffic equal to a utilization level of at least one (1) DS3 within the next twelve (12) months. Section 2.1.1 of Charter's proposed language doesn't make this forecast concept explicit, but Charter is willing to adhere to that policy in the interests of reaching an accommodation with Verizon. Thus, under this arrangement Charter could request a fiber meet point arrangement at the point when it first enters a new market, or after it has already entered a given market and established interconnection arrangements with Verizon, depending on its good faith traffic estimates.

Q. WHY IS CHARTER'S PROPOSAL FAIR AND REASONABLE?

A. First, it is important to recognize that establishing a fiber meet point also costs Charter money. It has to run fiber and buy fiber optic terminal equipment and multiplexers if it is not already available. So Charter has no motivation to establish fiber meet points if it doesn't make economic sense to do so. On the other hand, in our experience fiber meet point interconnection is more efficient and versatile than a series of copper/electrical connections, particularly as traffic is growing. The large carrying capacity of fiber means that growth in total traffic and associated trunking arrangements can be easily handled.

Given this, we want a fiber arrangement to be in place as soon as traffic levels are high enough to justify it. Our proposal allows us to begin the process of planning for and then implementing the meet point early enough on the traffic growth curve to allow Charter – and Verizon, too – to capture the efficiencies of these arrangements. Frankly, if Verizon didn't make money selling us the alternative arrangement – leased "entrance facility" connections from our location to Verizon's network – I believe that they would be eager to establish fiber meet points too.

Q. VERIZON ARGUES THAT A DS3 THRESHOLD REQUIREMENT IS NECESSARY TO ENSURE EFFICIENT USE OF FIBER OPTIC EQUIPMENT TO BE DEPLOYED. IS THIS ACCURATE?

A. Obviously there is some minimum level of traffic below which the cost of a fiber meet point is not justified. Even so, Verizon's argument misses the point. Charter is not asking for a fiber meet arrangement in order to exchange ***less*** than a DS3's worth of traffic volume. Charter recognizes that the most efficient use of these facilities is to transport high volumes of traffic. Indeed, that is precisely why Charter is requesting a fiber meet arrangement: because Charter expects to have a high volume of traffic that it will exchange with Verizon. So both parties agree that you don't want to use a fiber meet arrangement if there is not an appropriate volume of traffic.

Q. DOESN'T CHARTER'S PROPOSAL ENCOURAGE CHARTER TO REQUEST AND ESTABLISH FIBER MEET ARRANGEMENTS WHEN THE LEVEL OF TRAFFIC DOES NOT JUSTIFY THEM?

A. No. As noted above, Charter incurs costs in establishing a fiber meet arrangement that are comparable to, if not greater than, those that Verizon incurs. We have no incentive to voluntarily incur those costs if the level of traffic is too low to justify a fiber meet arrangement. When we establish a fiber meet arrangement, we are necessarily "putting our money where our mouth is" with regard to our forecasted traffic levels. However, forecasting isn't an exact science; sometimes forecasts are not always completely accurate. That being the case, we are not proposing to require Verizon to incur the costs of establishing a fiber meet arrangement unless Charter is willing to incur those costs as well. When both parties are required to consider investment to establish the fiber meet, it provides a natural disincentive to over-ordering fiber meet arrangements.

Q. DOES YOUR PROPOSAL CONFLICT WITH VERIZON'S PROPOSAL TO LIMIT CHARTER'S RIGHT TO REQUEST A FIBER MEET ARRANGEMENT?

A. Yes. Verizon wants to limit the situations where Charter can request a fiber meet arrangement from Verizon to those situations where the Parties are already exchanging a DS3's worth of traffic. This DS3 threshold concept is embodied in four specific (and somewhat complicated) proposals that Verizon has made. Each includes a traffic threshold "test" and some obligation for Charter to compensate Verizon for Verizon's fiber meet costs. My colleague, Mike Cornelius, reviews Verizon's proposed "tests" in detail and explains why each one is inappropriate.

Q. VERIZON SUGGESTS THAT CHARTER IS THE ENTITY WHOSE ACTIONS WILL CONTROL THE FLOW OF TRAFFIC OVER THE FIBER MEET POINT. DO YOU AGREE?

A. No; I don't think Verizon's characterization is completely accurate. It is true that the size of Charter's subscriber base will broadly affect the level of traffic exchanged between Verizon and Charter, but Verizon would have you believe that Charter can control the level of traffic at any point in time the same way a person can turn a spigot of water on and off. That, of course, is simply not accurate. Further, it would be contrary to basic economic principles to enter a market where we do not expect to succeed in gaining customer share of the market equal or greater than our investment in that market. In this regard, our past experience is that when we enter an incumbent's market we experience a reasonable level of subscriber success. Thus, we have every expectation of entering Verizon's markets and successfully competing with Verizon in order to expand our subscriber base. That type of competition is good for the consumers of Massachusetts, it ensures that they have competitive choices for their communications services.

That said, given the nature of Charter's business, the customers we attract are overwhelmingly residential customers who also subscribe to Charter's cable service. Traffic to and from residence customers is typically relatively balanced over time. If anything, since residence customers call business customers more frequently than vice versa, our customers tend to be (slight) net generators of traffic.

Given this, I don't really think it makes sense to say that Charter controls the flow of traffic over a meet point arrangement. The traffic flows are "controlled" on the one hand by Charter's customers who make calls, and by Verizon's customers, who either make calls to our customers or (for business customers) maintain businesses that depend on receiving calls.

Q. BUILDING ON ITS VIEW THAT CHARTER "CONTROLS" THE FLOW OF TRAFFIC, VERIZON ASSERTS THAT IT SHOULD BE ENTITLED TO SOME SORT OF GUARANTEE FROM CHARTER IF THE TRAFFIC DOES NOT MATERIALIZE. DO YOU AGREE WITH THAT SUGGESTION?

A. No, absolutely not. As noted above, it is not really fair to say that Charter "controls" the traffic flow. We are trying to expand our business by competing with Verizon – offering high-quality, reasonably priced telephone service. We know from our experience in other markets (and from the experience of other cable operators offering phone service) that we have an attractive service. So the key variable affecting how rapidly our traffic grows is probably the aggressiveness and effectiveness of Verizon's response to our competitive entry. In the marketplace, Verizon wants us to grow slowly – or not at – all in order to preserve their customer base and the revenue associated with those customers. Charter has no control over how effectively Verizon pursues that goal – but those Verizon efforts are what, in some sense, "controls" how fast we grow. Of course, I am not suggesting that Verizon should moderate its competitive efforts just to make sure that the amount of traffic we exchange over a fiber meet point meets some threshold. My point is just that it is both simplistic and misleading for Verizon to suggest that the amount of traffic the two carriers exchange is somehow unilaterally within either Charter's or Verizon's control.

In fact, the discussion just above gives a good perspective on Verizon's position here. Obviously, as a purely business/competitive matter, Verizon wants Charter to fail in the marketplace. So, Verizon is motivated to do what it can to slow down our growth, including imposing interconnection terms and conditions that are more burdensome or costly than they need to be. Putting roadblocks and potential financial penalties in the way of rapidly establishing efficient fiber-meet interconnections is certainly one way Verizon can do that. It seems to me, though, that encouraging and enabling facilities-based competitors like Charter is exactly what the drafters of the 1996 Telecommunications Act had in mind when they drafted the provisions intended to open the local telephone markets to competition. Assuming I am right about that, there is no reasonable basis for a new competitive entrant to be forced to provide the type of traffic or cost guarantees Verizon that seeks here.

Based on information my own counsel and regulatory experts have provided in the past (upon which I rely in order to make budgeting and scheduling decisions for all of Charter's telephone market launch activity) an ILEC like Verizon is required to interconnect with Charter via technically feasible methods of interconnection (which expressly include fiber meet points). As I understand it, the rules of interconnection do not include any obligation that the entity requesting interconnection provide a guarantee or assurance that the interconnection facilities will be fully utilized. In fact, prior to the Verizon meet point issue, I had never heard of any limitations for fiber meet point interconnection based on traffic thresholds or the cost demands that Verizon is making in this case.

Q. VERIZON ARGUES THAT CHARTER ALREADY EXCHANGES MORE THAN A DS3'S WORTH OF TRAFFIC IN LATA 128. IF SO, WHY CAN'T CHARTER SIMPLY ACCEPT THEIR PROPOSAL TO USE THAT AS A TRIGGER?

A. It is true that Charter and Verizon currently exchange more than a DS3 worth of traffic in LATA 128. But that does not mean that Charter will agree to include Verizon's DS3 threshold test in the Parties' amendment. This is so because including that language in the amendment for Massachusetts could affect Charter's obligations in other meet points in Massachusetts or in other states. Although other states should not necessarily be the Department's concern, they must be in this case. The amendment that Charter and Verizon have been negotiating is intended for use as a template in other states that Charter and Verizon interconnect (which would include any Verizon operating areas such as California, Illinois, Texas, North Carolina, South Carolina, Wisconsin, Michigan and so on). Therefore, if Charter agreed to include that language in the Massachusetts amendment, Verizon would likely argue that it would be appropriate to use that "trigger" language in those other states because Charter agreed to its inclusion in Massachusetts. Also, the Department has doubtless been presented over time with claims that it should adopt this or that position because other states have approved agreements that contain it.

Charter does not just interconnect with Verizon; we interconnect with AT&T and other ILECs as well. We cannot agree to an unnecessarily restrictive and unreasonable position in one state – even if in that state it might not literally apply to us – knowing that our agreement (or the regulators' approval of the deal) will be thrown up as an appropriate methodology in other states. Worrying about multi-state impacts is, unfortunately, a part of the reality of negotiating interconnection agreements. So, for Charter to accede to Verizon's unreasonable proposal here would raise the issue in other states, which will effectively impair Charter's ability to avoid these limitations in those other states where it does not already have a DS3 worth of traffic with Verizon.

The situation in LATA 128 also illustrates the timing issues associated with these types of interconnection arrangements. When Charter first requested a fiber meet point arrangement from Verizon in Massachusetts, it was not already exchanging a DS3's worth of traffic in LATA 128. That request was made some nineteen (19) months ago. Had Verizon agreed to begin implementing a fiber meet point arrangement at that time then the Parties would now be in a position to move that traffic on to the fiber meet point arrangement – reliable, high bandwidth facilities that are well suited for just such a situation. But we've lost that opportunity because of Verizon's unwillingness to proceed with Charter. Instead, we are here arbitrating the terms of a contract to do the same.

Q. WHAT ARE CHARTER'S CONCERNS WITH VERIZON'S TRAFFIC THRESHOLD TESTS?

A. Charter has several concerns with Verizon's traffic several threshold tests.

With respect to the first traffic threshold test, as described in the direct testimony of Mike Cornelius, Charter's primary concern is that it limits Charter's ability to establish a technically feasible method of interconnection with Verizon. Under this test Charter cannot request a fiber meet arrangement with Verizon until it first enters the applicable market, leases facilities from Verizon, and then begins to serve customers in the market and exchange traffic with Verizon. That process can take time, which means that Charter is forced to lease facilities for a period of time until the requisite traffic threshold is satisfied.

The distinction Verizon makes with respect to so-called "applicable" traffic (i.e. traffic that does not include operator services / directory assistance, 911 and InterLATA toll traffic) is noteworthy because Verizon does not count any of that traffic against the DS3 traffic threshold requirement. These traffic limitations make no sense from an engineering perspective. Under these limitations, Charter and Verizon could be exchanging more than a DS3's worth of traffic, but Verizon would still deny Charter the right to establish a fiber meet arrangement because of this arbitrary exclusion of certain types of traffic.

With respect to the second traffic threshold test, as described in the direct testimony of Mike Cornelius, Charter is concerned both with the traffic threshold requirement and the compensation requirement. My colleague, Mike Cornelius, discusses Charter's concerns with the traffic threshold requirement. As to the compensation requirement, Charter is concerned that Verizon is proposing a process that shifts Verizon's costs of Verizon's portion of the fiber meet point to Charter. In essence, Verizon is trying to force Charter to assume the costs of Verizon's meet point arrangement. That is unfair and unworkable.

IV.B. ISSUE 2 – ALLOCATION OF THE COSTS OF THE FIBER MEET POINT ARRANGEMENT

Q. WHAT ARE YOUR CONCERNS WITH VERIZON'S COST SHIFTING PROPOSAL?

A. I have two main concerns. First, it is unfair and contrary to what I understand to be prevailing law and the Parties' current interconnection agreement. Second, it is unworkable because there does not seem to be any way for Charter to easily determine what, in fact, Verizon's actual costs are.

As to the first concern, the Parties' interconnection agreement contemplates that each Party will be responsible for the costs of interconnection facilities on its respective side of the point of interconnection ("POI"). Once established, the meet point arrangement would be designated as the Parties' POI. So Verizon's proposal seems to conflict with the contractual principles that the Parties have already agreed upon. Moreover, I believe that FCC decisions, and decisions of this Department, are consistent with the principle that interconnection costs should be borne equitably by both Parties and that one Party should not shift its costs to the other Party.

As to the second concern, if Charter is forced to pay for Verizon's cost of facilities to build a fiber meet arrangement it would be very difficult (if not impossible) for Charter to determine what those precise costs are. I understand that Charter's negotiator asked for those costs during negotiations on several occasions, but Verizon never produced them. Also, since the Department began hearing this dispute Verizon has variously quoted a range of costs to the Department of between $60,000 to $90,000. So, it is not at all clear what those costs would be, nor is it clear that Verizon knows what they would be.

This seems to be why one of Verizon's costs shifting proposals uses surrogate rates from Verizon's tariffs instead of Verizon's actual costs.

Q. PLEASE EXPLAIN.

A. Under Verizon's second and third traffic threshold tests, Verizon includes a cost shifting, or penalty, provision that would apply if the amount of traffic over the fiber meet point arrangement did not reach a DS3. Specifically, Verizon proposes the following:

> If the Parties establish a fiber meet arrangement under this Section 2.1.2, then, **<u>for any month</u>** (except for the first month after the establishment of such fiber meet arrangement) **<u>that Verizon determines</u>** that the Parties did not exchange applicable traffic over such fiber meet arrangement in an amount equal to a utilization level of at least one (1) DS3, **<u>Verizon may bill</u>** (and Charter shall pay) **<u>Verizon's short-term (month to month) Tariff rates</u>** for a **<u>DS3 Channel Termination</u>**, a **<u>DS3/DS1 Multiplexer and</u>**, if applicable, **<u>mileage between Verizon wire centers</u>**.

Verizon Proposal, Section 2.1.2 (emphasis added).

Under this arrangement Charter must pay Verizon if the traffic exchanged over the fiber meet point arrangement does not reach a DS3. That, in and of itself, is problematic. But the real problems are revealed when you read Verizon's proposal closely. First, note that this liability arises whenever "***Verizon*** determines" the traffic flow is to low. Charter has no say in this process, it is entirely up to Verizon's discretion to determine when this liability arises.

Second, note that this applies for any month that the traffic flow is below Verizon's expectations. So it could trigger liability for Charter any month that the traffic flow isn't at a DS3 or higher. That could include the months leading up to the implementation of the fiber meet point arrangement (after it is already built but before the Parties start using it). That could also include any month that the traffic falls below a DS3, even if that occurred because of anomalies in calling patterns or network outages for a single day. The language is so broad that it exposes Charter to the risk of payment under several different scenarios.

Third, Verizon doesn't ask Charter to pay for Verizon's ***actual costs***. Instead, Verizon seems to believe that its "short-term" tariff rates for channel terminations and multiplexers are equivalent to its ***costs*** of such facilities. But tariff rates don't seem to be a useful surrogate because tariff rates are usually based on assumed average costs for the type of facility in question, plus a rate of return or allowed margin. Thus, Verizon is apparently asking Charter to pay for the costs of the facilities, and some additional mark-up to those costs that would be revenue for Verizon.

In addition, Verizon's proposals would also make Charter liable for "applicable mileage between wire centers." That phrase is not limited or defined in any way. It is completely broad and open-ended – undoubtedly as Verizon prefers – and could be construed to require Charter to pay for fiber or other facilities deployed by Verizon between its own wire centers, within its own network. The point is that it is not at all clear what that means, or how that relates to Verizon's costs of building and operating a fiber meet point arrangement.

These charges are unlike any other in an interconnection agreement that I am aware of. Normally, each Party pays for its own cost of building and operating an interconnection facility. In fact, Verizon's proposal raises the following question: given that Verizon is asking Charter to pay for Verizon's labor, equipment, and other costs, isn't Charter in some sense acquiring those facilities? In other words, if we pay for them then shouldn't

Charter be entitled to acquire title (or some other form of ownership or control) to the facilities?

Q. DO YOU HAVE OTHER CONCERNS WITH VERIZON'S COST SHIFTING PROPOSALS?

A. Yes. The cost shifting proposal discussed above is one of two equally egregious proposals Verizon is trying to impose on Charter. The second cost shifting proposal would come into play if Charter requested a fiber meet point arrangement from Verizon based solely on a forecast of a DS3 of traffic within twelve months.

Q. PLEASE EXPLAIN VERIZON'S SPECIFIC PROPOSAL.

A. Under Verizon's fourth traffic threshold test, unlike the others, Charter can request a fiber meet point arrangement if Charter forecasts that the Parties will exchange an amount of "applicable" traffic equal one (1) DS3 within the next twelve (12) months. Putting aside the limitation to "applicable traffic," this approach requires that Charter must provide Verizon a letter of credit or cash security deposit "in an amount determined by Verizon based upon Verizon's anticipated costs (including, without limitation, labor at Verizon's Tariff rates for the deployment) of facilities." This proposal is detailed in Section 2.1.4 of Verizon's proposal.

The scope and breadth of Verizon's second cost shifting proposal can only be appreciated when restated in its entirety:

> Charter may request a Fiber Meet arrangement by providing written notice thereof to Verizon if Charter has submitted a good faith, written forecast to Verizon showing that the Parties will consistently exchange an amount of applicable traffic equal to a utilization level of at least one (1) DS3 within the next twelve (12) months. If the Parties establish a Fiber Meet arrangement under this Section 2.1.4, **Verizon may request (and Charter shall promptly provide) either: (a) an unconditional, irrevocable standby letter of credit naming Verizon as the beneficiary thereof and otherwise in form and substance satisfactory to Verizon from a**

financial institution acceptable to Verizon; or (b) a cash security deposit in U.S. dollars held by Verizon. The letter of credit or cash security deposit shall be **in an amount determined by Verizon based upon Verizon's anticipated costs (including, without limitation, labor at Verizon's Tariff rates for the deployment) of facilities** for such Fiber Meet arrangement. If Verizon requests a letter of credit or cash deposit, Verizon shall not have an obligation, it otherwise would have, to establish a Fiber Meet arrangement under this Amendment until Charter provides such letter of credit or cash deposit to Verizon. If Charter elects to provide a cash security deposit under this Section 2.1.4, the Parties intend that the provision of such deposit shall constitute the grant of a security interest in the deposit pursuant to Article 9 of the Uniform Commercial Code as in effect in any relevant jurisdiction. In addition, if Charter elects to provide a cash security deposit under this Section 2.1.4, Verizon shall open an interest-bearing account in Verizon's name at a financial institution and deposit Charter's cash security deposit in such account, which shall bear a competitive rate of interest. **If**, twelve (12) months after establishment of a Fiber Meet arrangement under this Section 2.1.4, **Verizon determines** that the Parties are not consistently exchanging an amount of applicable traffic equal to a utilization level of at least one (1) DS3, then **Verizon may (but is not obligated to) draw on the letter of credit or cash deposit upon notice to Charter in respect of costs actually incurred by Verizon to deploy facilities on such Fiber Meet arrangement (and for the avoidance of any doubt, such costs shall include, without limitation, the costs of labor, at Verizon's Tariff rates therefore). If Verizon so draws on a letter of credit or cash deposit, Charter hereby irrevocably waives any right it may have to make a claim or the like with respect to (or in connection with) the amounts that Verizon has drawn**. In the event Verizon returns Charter's cash security deposit to Charter under the terms of this Amendment, Verizon will also provide to Charter the interest that Verizon actually receives from the financial institution with respect to Charter's cash security deposit held by such financial institution. Except as expressly set forth in this Section 2.1.4, (a) Charter shall not be entitled to any interest (or other payments, credits or the like) from Verizon with respect to any cash security deposit or letter of credit provided by Charter under this Amendment, and (b) Charter hereby irrevocably and unconditionally releases Verizon from any claims, suits, actions and the like and waives any rights Charter may have, or in the future may acquire, with respect to receiving interest (or other payments, credits or the like) from Verizon under this Amendment, Verizon's Tariffs, Applicable Law or otherwise with respect to any such any cash security deposit or letter of credit provided to Verizon. For the avoidance of any doubt, **Charter will promptly provide to Verizon any interest (payments or the like) that Charter receives from Verizon with respect to any cash security deposit(s) in excess of the amount set forth in this Section 2.1.4**.

Verizon Proposal, Section 2.1.4 (emphasis added).

Q. WHAT ARE CHARTER'S CONCERNS WITH THIS PROPOSAL?

A. Charter's concerns are several. First, Verizon expects Charter to provide either a letter of credit or a cash deposit to Verizon in an amount ***determined by*** Verizon, based upon Verizon's "anticipated" costs and not subject to any interest payable to Charter. This proposal is problematic because it gives Verizon unilateral discretion, without any right of Charter to actually verify Verizon's cost estimate. More problematic is the fact that the amount of the letter of credit or cash deposit that Verizon can demand from Charter would be based on an amorphous concept: "anticipated" costs. Under this broad standard Verizon could undoubtedly conceive of all kinds of "costs" which it anticipates, and then demand that Charter provide a letter of credit or cash deposit in that amount. If Charter refused, then under this proposal Verizon could simply refuse to move forward with the fiber meet point arrangement.

In addition, Verizon also proposes that it have the unilateral power to decide when it can draw on the letter of credit and Charter must waive any right it may have to oppose or challenge such action.

Finally, Verizon proposes that Charter not be entitled to any interest on any deposit. Any deposit from Charter would result in Charter's loss of those funds as long as they are unavailable to Charter. The time value of money states that those funds will cost Charter more over time and Charter should be reimbursed for that lost value. This provision is yet another example of the unreasonableness of Verizon's position on these issues.

As you can see, Verizon has proposed a completely one-sided mechanism that requires Charter to effectively open up its checkbook so that Verizon can draw on the funds whenever Verizon, and Verizon alone, determines it appropriate to do so. And if that happens, Charter has no recourse or opportunity to challenge Verizon's actions. Nor does Charter have any right or ability to attempt to determine or verify Verizon's actual costs. It is these unreasonable and unrealistic proposals that Charter vigorously opposes.

Q. WHAT IS CHARTER'S PROPOSAL ON THE QUESTION OF WHO PAYS FOR THE COSTS OF BUILDING AND OPERATING THE FIBER MEET POINT ARRANGEMENT?

A. Charter proposes that each Party bear its own costs of building and operating the fiber meet point arrangement. This proposal is consistent with principles in the Parties' interconnection agreement, and federal and state law, concerning costs of interconnection. Based on advice from my internal and external counsel, I understand that the FCC and the courts have repeatedly ruled that where two interconnecting LECs interconnect and exchange traffic, the designated point of interconnection should be the demarcation point for cost responsibility. Once the fiber meet point arrangement is established, it will be designated as the point of interconnection. Therefore, consistent with those principles it should be the demarcation point for apportioning the costs of the fiber meet point arrangement. In other words, each Party should be responsible for the costs of the fiber meet point arrangement on its side of the point of interconnection.

Q. WHAT ARE THE BENEFITS OF CHARTER'S PROPOSAL?

A. Given that both Parties will bear some cost in constructing such an arrangement, Charter's proposal is fair because it apportions the costs of the fiber meet point arrangement equitably. Indeed, it seems quite possible that Charter's costs of building and operating a fiber meet point arrangement could be greater than Verizon's costs. Therefore, Charter's proposal is undoubtedly reasonable in that it may well be responsible for higher costs than Verizon in implementing these arrangements. Charter's proposal also ensures that each Party will develop and construct a fiber meet point arrangement in the most efficient and effective manner. Because each Party will be responsible for their own costs of building and operating a fiber meet point arrangement, each Party will have the greatest incentive to make sure that its portion of the fiber meet point arrangement is constructed in the most efficient and cost-effective manner.

In addition, note that Charter's proposal does not preclude the Parties from paying "reciprocal compensation" to one another. The compensation associated with the transport and termination of traffic from a point of interconnection to a called party's premises would not be affected by Charter's proposal to apportion the costs of the fiber meet arrangement.

V. <u>OTHER ISSUES</u>

Q. DO YOU HAVE ANY COMMENTS ON ISSUES 3, 4 AND 5?

A. Not at this time. Those issues are overwhelmingly "technical" in nature, so I defer to my colleague, Mike Cornelius, with respect to them. To the extent that business or operational questions arise with respect to those issues as this matter proceeds, I will of course do my best to answer them.

VI. <u>CONCLUSION</u>

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.